

JS-44 (Rev 12/07)

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS Amco Insurance Company (b) County of Residence of First Listed Plaintiff <u>Des Moines, IA</u> (EXCEPT IN U.S. PLAINTIFF CASES) (c) Attorneys (Firm Name, Address, and Telephone Number) James Cole, Marshall, Dennehey, Warner, Coleman & Goggin, 10 N. Main St., 2 nd Fl., Doylestown, PA 18901; 267-880-2026	DEFENDANTS Brian Yohe and Jill Yohe County of Residence of First Listed Defendant <u>York County</u> (IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED. Attorneys (If Known)
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II. BASIS OF JURISDICTION (Place an "X" in One Box Only) <input type="checkbox"/> 1. U.S. Government Plaintiff <input type="checkbox"/> 2. U.S. Government Defendant <input type="checkbox"/> 3. Federal Question (U.S. Government Not a Party) <input checked="" type="checkbox"/> 4. Diversity (Indicates Citizenship of Parties in Item III)	III. CITIZENSHIP OF PRINCIPAL PARTIES (Place An "X" in One Box for Plaintiff and One Box for Defendant) (For Diversity Cases Only) <table style="width: 100%;"> <tr> <td style="width: 33%;">Citizen of This State</td> <td style="width: 10%;">PTF <input type="checkbox"/> 1</td> <td style="width: 10%;">DEF <input checked="" type="checkbox"/> 1</td> <td style="width: 33%;">Incorporated <i>or</i> Principal Place of Business in This State</td> <td style="width: 10%;">PTF <input type="checkbox"/> 4</td> <td style="width: 10%;">DEF <input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2</td> <td><input type="checkbox"/> 2</td> <td>Incorporated <i>and</i> Principal Place of Business in Another State</td> <td><input checked="" type="checkbox"/> 5</td> <td><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen of Subject of a Foreign Country</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </table>	Citizen of This State	PTF <input type="checkbox"/> 1	DEF <input checked="" type="checkbox"/> 1	Incorporated <i>or</i> Principal Place of Business in This State	PTF <input type="checkbox"/> 4	DEF <input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated <i>and</i> Principal Place of Business in Another State	<input checked="" type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen of Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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Citizen of Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6														

CONTRACT	TORTS	FORFEITURE / PENALTY	BANKRUPTCY	OTHER STATUTES
<input checked="" type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits. <input type="checkbox"/> 160 Stockholder's Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 195 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury – Med Malpractice <input type="checkbox"/> 365 Personal Injury – Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 426 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus – Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS – Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent, Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing / Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN (Place an "X" in One Box Only) <input checked="" type="checkbox"/> 1 Original Proceeding <input type="checkbox"/> 2 Removed from State Court <input type="checkbox"/> 3 Remanded from Appellate Court <input type="checkbox"/> 4 Reinstated or Reopened <input type="checkbox"/> 5 Transferred from another district (specify) <input type="checkbox"/> 6 Multidistrict Litigation <input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment	VI. CAUSE OF ACTION Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. §1332 Brief description of cause: Complaint for Declaratory Judgment
VII. REQUESTED IN COMPLAINT: <input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ _____ Declaratory Judgment	CHECK YES only if demanded in complaint: JURY DEMAND: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

VIII. RELATED CASE(S) (See instructions) JUDGE _____ DOCKET NUMBER _____

DATE 1/8/15 SIGNATURE OF ATTORNEY OF RECORD JHC4273 

FOR OFFICE USE ONLY

RECEIPT #		AMOUNT		APPLYING IFP		JUDGE		MAG. JUDGE	
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MARSHALL, DENNEHEY, WARNER, COLEMAN & GOGGIN

By: James H. Cole, Esquire

Attorney I.D. #84039

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Doylestown, PA 18901

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Attorney for Plaintiff

**THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA**

AMCO INSURANCE COMPANY

1100 Locust Street

Des Moines, IA 50391-1100

v.

BRIAN YOHE AND JILL YOHE

705 Broadway

Hanover, PA 17331-2014

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DECLARATORY JUDGMENT COMPLAINT

The Parties

1. Plaintiff, Amco Insurance Company, is a corporation licensed to do business in Pennsylvania with a principal place of business located at 1100 Locust Street, Des Moines, IA 50391.

2. Brian Yohe and Jill Yohe are Pennsylvania residents residing at 705 Broadway, Hanover, PA 17331.

Jurisdiction And Venue

3. This Honorable Court has diversity and jurisdiction pursuant to 28 U.S.C. §1332, as the parties are citizens of different states and the amount in controversy exclusive of interest and cost exceeds the sum of \$75,000.00.

4. Venue is proper in this judicial district pursuant to 28 U.S.C. §1391(a), as the subject property is located within the judicial district and the policies of insurance giving rise to the litigation were issued to the insureds insuring property located within this judicial district.

Factual Background

5. Amco Insurance Company originally issued a homeowners' policy of insurance to Brian Yohe and Jill Yohe on February 7, 2014, with total potential limits for structural contents of \$300,390.00.

6. Prior to the issuance of the policy, in the summer of 2013, in anticipation of remodeling the kitchen, Ms. Yohe wrote and drew pictures on the kitchen walls and fixtures.

7. As of the date of the fire, no renovation or repair work had been completed to the kitchen, and the "graffiti" remained throughout the kitchen.

8. The home is deeded to Brian Yohe and his ex-wife, Kathleen Smith.

9. While Brian Yohe and Jill Yohe wish to refinance the property to remove Kathleen Smith's name from the mortgage and Deed, they are unable to do so because of credit issues.

10. On May 9, 2014, Brian Yohe left the subject property for work at approximately 5:30 a.m.

11. On May 9, 2014, Jill Yohe left the subject property for work at approximately 6:00 a.m.

12. Despite not having to be in work until 7:00 a.m., Ms. Yohe arrived at work on the subject date at 6:15 a.m.

13. When Jill Yohe left for work, the doors to the home were locked and secured.

14. On May 9, 2014, at 6:00 a.m., all of the keys to the home were accounted for.

15. At 6:55 a.m., smoke was reported from the home by a passerby, who alerted authorities.
16. Upon the fire department's arrival, the house was locked and the fire department had to force entry to gain access to the home.
17. Multiple fires were extinguished, and found to have been incendiary in origin.
18. Four points of origin were discovered inside the home as follows:
 - a. the southeast corner of the living room where a bench was completely consumed;
 - b. the basement ceiling joist were a Pittsburgh Steelers' blanket that was usually stored on the living room bench, was stuffed into the basement ceiling joist and set on fire;
 - c. a mattress in the southeast corner of the basement was set on fire; and
 - d. a wooden crate in the basement with a blanket draped on top of it was set on fire.
19. All four points of origin were separate and non-communicating.
20. It is asserted upon information and belief that arson detecting dogs detected flammable liquids in two of the four points of origin.
21. Four separate fires were intentionally set in the home.
22. Jill Yohe was admittedly in the house less than one hour before the fires were discovered.
23. There were no signs of forcible entry to the house prior to the fire department's arrival.

COUNT I
DECLARATORY JUDGMENT ACTION

24. Plaintiff incorporates by references paragraphs one through twenty-three(1.-23.) as though fully set forth herein at length.

25. The subject policy contains the following policy language:

SECTION I – PERILS INSURED AGAINST

A. COVERAGE A – Dwelling And COVERAGE B – Other Structures

1. We insure against risk of direct physical loss to property described in Coverages A and B.

* * *

SECTION I – EXCLUSIONS

8. Intentional Loss

Intentional loss means any loss arising out of any act an "insured" commits, or conspires to commit with the intent to cause a loss.

In the event of such loss, no "insured" is entitled to coverage, even "insureds" who did not commit or conspire to commit the act causing the loss.

* * *

SECTION I – CONDITIONS

Q. Concealment Or Fraud

We provide coverage to no "insureds" under this policy if, whether before or after a loss, an "insured" has:

1. Intentionally concealed or misrepresented any material fact or circumstance;
2. Engaged in fraudulent conduct; or
3. Made false statements;

relating to this insurance.

[See certified policy attached hereto as Exhibit "A."]

26. Plaintiff owes no duty to indemnify as the intentional fire does not constitute an accidental direct physical loss.

27. Additionally, the subject claim is excluded as at least one of the named insureds intentionally caused the subject fires.

28. Defendants breached the policy conditions by intentionally concealing and misrepresenting material facts and circumstances, engaged in fraudulent conduct and made false statements relating to this insurance.

29. Plaintiff has been prejudiced by the Defendants' breach of the policy conditions.

30. Due to the breach of the policy conditions and the applicable exclusions pursuant to said policy, Plaintiff respectfully requests this Honorable Court declare the subject policy void and declare that no coverage exists under said policy for the subject loss.

WHEREFORE, Plaintiff, Amco Insurance Company, respectfully requests this Honorable Court declare the subject policy void and that no coverage exists due to Defendants' breach of the policy conditions and the applicable exclusions pursuant to said policy.

**MARSHALL, DENNEHEY, WARNER,
COLEMAN & GOGGIN**

By: 

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705 Broadway

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CERTIFICATE OF SERVICE

I, James H. Cole, Esquire, hereby certify that a true and correct copy of the Declaratory Judgment Complaint was served on the below listed date, by first class mail, postage prepaid, to the following addresses:

Charles T. Young, Esquire

Griffith, Strickler, Lerman, Solymos & Calkins

110 S. Northern Way

York, PA 17402-3737

**MARSHALL, DENNEHEY, WARNER,
COLEMAN & GOGGIN**

By: 

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Date: 01/08/2015